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ABSTRACT

This analysis examines when and how the state facilitated or repressed the emergence and success of the Women's Liberation Movement for the period between 1900 to 1975. The Feminist Movement has placed women's issues on the agenda, but that does not mean that they have been successful. Examples of the kinds of efforts the state is currently willing to extend include the following: the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964 which was to insure equal employment opportunity, and President Kennedy's Executive Order in 1961 in which he charged a committee with implementing equal employment opportunities in government employment and in the employment of government contracts. The intended impact of these actions, however, is very limited due to either the scope of coverage or lack of enforcement/sanctioning power. In the short term, an analysis of current gains suggests that legislative efforts have been marginal in addressing women's labor market problems. The long term implications of the legislative procedures are harder to evaluate. The vagueness and symbolic nature of state regulatory policies do not necessarily mean that they can never be converted into means of generating tangible resources. If this process can come about, it requires long-term, sustained effort on the part of the challenging group. The women's movement had and has at its disposal many resources crucial to this conversion process including organization, money, numbers, public support, expertise, and sympathizers in the bureaucracy. (Author/RM)

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The State and the Political Mobilization of Women: Bargaining for the Feminist Agenda, 1900-1975

by

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The contention for political power always involves at least two parties. In Democratic societies, the State often arbitrates when problems of individuals are collectively viewed as public concerns. Social movements are one of the primary means of aggregating private grievances into political disputes and appealing to public authorities for redress. The State can, in turn, respond to the new contenders by either repressing, preempting, coopting, or facilitating the placement of demands on the political agenda. Using historical events data drawn from secondary sources, the following analysis examines when and how the State facilitates or represses the emergence and success of the Women's Liberation Movement for the period between 1900 to 1975.

SECTION I: ACTIVISM, PUBLIC OPINION, AND LEGISLATION, AN OVERVIEW

The linkage between social protest and the timing of governmental reaction is an area in need of extensive research. Existing studies suggest that the State is conservative in its response, requiring a high degree of mass-based participation and sustained public support. Studies of the Civil Rights (Burstein) and Anti-War Movements (Skolnick) indicate that social movements are effective when they are able to engage large numbers of people in a variety of activities for an extended period of time. They have also needed to trigger the sympathies of a majority of issue publics as a necessary but not sufficient condition. In this section we examine the relationship between political activism, public opinion, and government response.

Quantifying Feminist Mobilization

Event data are used to catalogue women's political activities aimed at changing women's traditional role and status. The enumeration of these demands is based on historical treatments of the political activities of women during the twentieth century (Appendix). Although women have been visibly active in numerous movements such as Progressivism, Peace Movements, the Student Movement, and the Socialist Movement, their central concerns in participating in these movements were not issues of women's rights. This chronology does not include these involvements or efforts aimed at preserving women's traditional status.

Leading events are defined in a variety of ways. Concern with large scale efforts at political mobilization results in a bias in favor of national level events. Local events such as the establishment of feminist services, passage of state level legislation, formation of local groups, or local demonstrations are included if they are exemplary cases followed by a proliferation of similar

activities. Local events which received national coverage or had implications for national policies were also recorded. Upon completion of the histories, the number of events per year are totalled to form an indicator of political demands.

Several cautions are in order. First, each event is equally weighted, thereby distorting the significance of particular events. Second, political efforts at the earlier parts of the century were less likely to stress national level activities, given the emphasis on State's Rights. Finally, the increased number of events during the later part of the century may be a reflection of the easier retrieval of more current information. Despite these caveats, there is confidence that this measure accurately illustrates the trend, if not the number, of events for each time period. The majority of the events recorded concerns the passage of legislation, the formation of national level organizations, and activities involving a substantial number of people. These events are likely to have equal probability of being noted throughout the century.

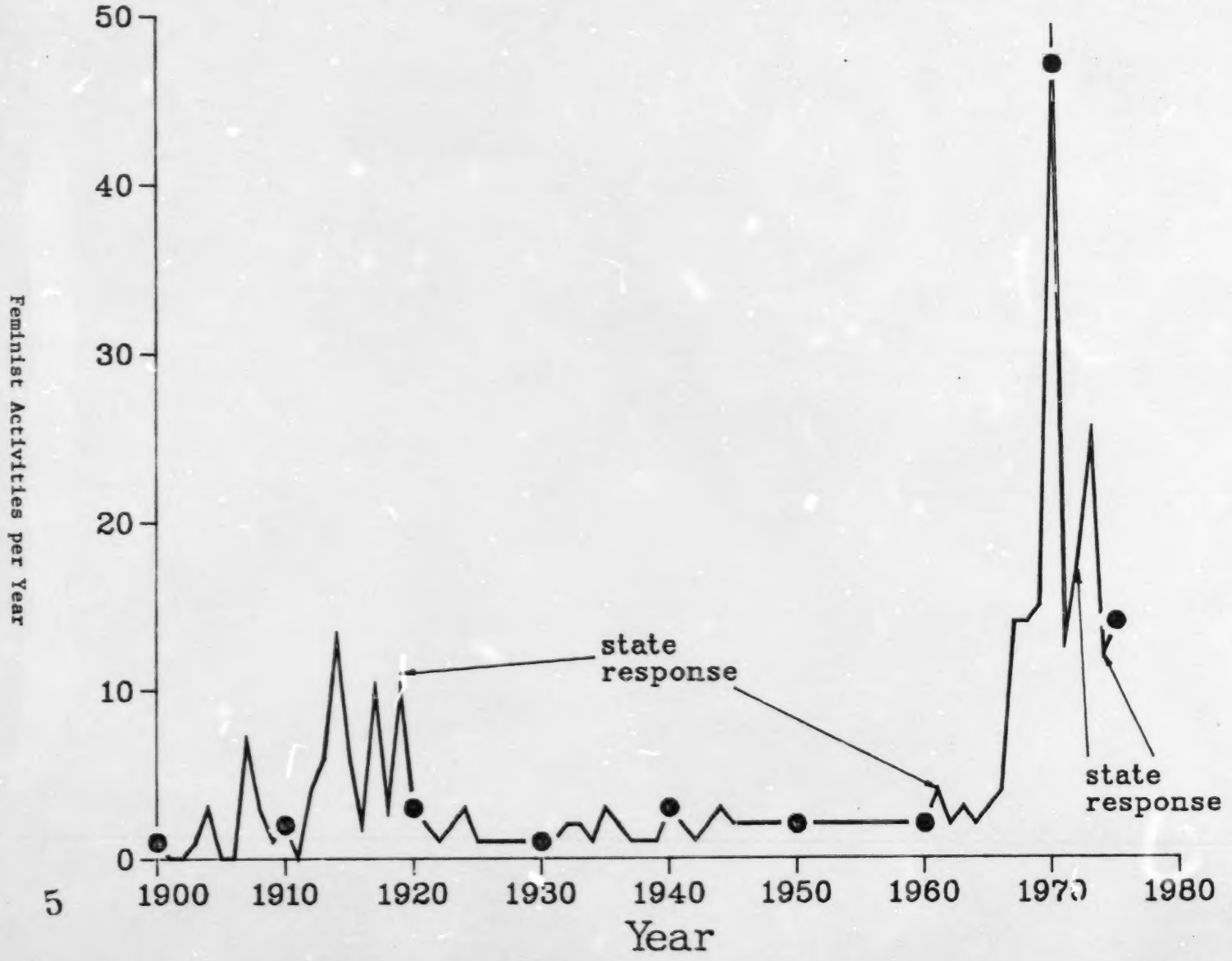
Feminist Mobilization and Government Action

The history of the efforts expended by women to secure goods and services for women is a sketchy scenario. Amidst a pattern of fits and starts, women have pursued many tactics in an attempt to secure their demands. Feminist have lobbied legislators, barraged the courts with litigation, hoisted picket signs, gone to jail, infiltrated political parties, and boycotted major corporations. In addition to lobbying the State, women have established organizations to provide services and allocate resources in order to compensate for the inadequacies of public policies.

A line tracing efforts at political mobilization yields a jagged portrait (Figure 1). During the first three decades feminist activity centered around three issues: organizing women workers, establishing protective labor legislation, and gaining the franchise. All of these efforts are rationalized in terms of the inherent differences between men and women. The years between 1930 and 1960 are often viewed as the feminist wastelands and, as such, are poorly charted. While there is no mass movement during this period, women begin to vote in greater numbers, increase their participation in party organizations (Andersen), and unofficial cadres of women push for greater access to political positions and keep the flame burning under the ERA (Ware).

The early sixties mark the beginning of the modern feminist movement. Initial gains made during these years are modest and seemingly innocent. The activities of commissions studying the status of women at this time

Figure 1: Feminist Political Action, 1900 – 1975



foreshadow the proliferation of feminist organizations and activities at the end of the decade. Feminist efforts during the sixties and seventies are aimed at establishing equal opportunity and the elimination of role differentiation on the basis of sex. This meant an attack on all most all aspects of everyday life.

The points at which the State responds or initiates on women's issues are marked by arrows on the feminist chronology. State action is defined as legislative, executive, or judicial mandates addressing problems of sex-based inequality. The overall pattern of group initiation-state response found for other groups appears to hold in the case of the Feminist Movement as well.

There are three periods when the government legislates on women's issues: around the twenties, the early sixties, and the early seventies. At the beginning of the Century, Congress had not passed any laws protecting the civil rights of women. After a long period of sustained and increasing mobilization by women's groups, the State grants women suffrage. This configuration of sustained, accelerating demands is also evident in the period prior to 1972 when Congress passes more legislation on women's rights than the combined efforts of all previous legislatures.

The exception to this pattern is the seemingly unprompted action during the early sixties. In this case, the lead-lag relationship between masses and elites is reversed. The significance of this reversal will be examined in Section II.

Public Opinion and Women's Rights Legislation

Public demonstrations, law suits, and interest group lobbying serve as indirect as well as direct means of pressuring elites. If challenging groups are to succeed in placing their claims on the political agenda, they need to create public sympathy for their cause. The mobilization of an issue public that is supportive and attentive to the demands of the contending group expands the scope of conflict and increases the probability of a favorable response (Schattschneider). If new groups do not enjoy public support, then there is no incentive for the State to negotiate with these contenders (Oberschal, Gamson, and Lipsky).

If governmental response to feminist demands is influenced by public opinion, then the State will not initiate action until a substantial majority of the public is ready to accept legislation in this controversial area. There are very few time-series trends on issues of women's rights that predate the rise of the Women's Movement (Mason). However, trend data are available on support for

women's nontraditional role as workers, willingness to vote for a woman President, and favoring organized efforts to strengthen and change women's status. These questions were asked after women won the vote limiting the discussion to the current Feminist Movement.

State intervention in labor market activities on behalf of sex-equality sanctions women's labor force participation and validates nontraditional forms of female behavior. The government is not likely to legislate in an area traditionally viewed as a set of private relationships unless there is strong public support for this action (Wilson). Overall, this is an accurate description of the timing of equal opportunity legislation. Again, the EPA and Title VII are the exception. These actions were not prompted by public opinion. Approval of married women working (Table 1) increased rapidly between 1945 and 1967 (24% to 44%) but the majority of the public were still hesitant on this issue. There was a willingness to vote for a woman president among a slim majority of the public in 1967 (54%) but this does not reflect a pattern of increasing support, 52% were willing to vote for a woman in 1955 (Table 2).

State response in the early seventies fits the hypothesized pattern. Public approval for married women workers increased to 72%, over two-thirds of the public are willing to vote for a woman president, and support for the efforts to strengthen women's status increased from 48% in 1971 to 59% in 1975 (Table 3). There was a great deal more scope, quantity, and enforcement power in the legislative effort of the early seventies as compared to the early sixties. The second wave of government legislation in the area of sex discrimination occured when the proportion of the public favoring nontraditional market activity and efforts to change women's status was well over fifty percent and increasing.

SECTION II: THE SUBSTANCE OF RESPONSE

Legislative Action: The Early Sixties

Having outlined the general pattern, a qualitative analysis is needed to address when, why, and how authorities respond to feminist demands. In order to examine these questions in greater detail, the analysis in the following section is limited to the State's relationship to the current Women's Liberation Movement. Why does the State legislate in the area of sex-equality when there appears to be no pressure for such action in the early sixties? Answering this question requires an examination of: 1) whether these actions are motivated by concern for furthering sex equality; 2) the effectiveness (actual and potential) of these actions; and 3)if there are instances

Table 1: Approval of Married Women Working*

	Year	% Approving
	1936	15%
	1938	22
--→	1945	24
	1967	44
	1969	55
⟶	1972	64
⟶	1975	68
	1978	72

*Do you approve of a married woman earning money in business or industry if she has a husband capable of supporting her?

Table 2: Vote For A Woman President*

	Year	% Yes
	1937	31%
	1949	48
--→	1955	52
	1967	54
	1969	57
⟶	1971	66
	1976	73

Table 3: Favor Efforts to Strengthen Women's Status

	Year	% Favor	% Oppose
	1970	42%	41%
⟶	1971	48	36
	1975	59	28
	1977	64	27
	1978	64	25
	1979	65	28

Source: Opinion Roundup, Public Opinion, December/January 1980, p. 33.

of State action during this period when the State attempts to repress or fails to facilitate other efforts potentially useful in ending sex discrimination.

The establishment of the President's Commission on the Status of Women and the passage of both the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964 was not a response to sustained mass-based action. This pattern of state-initiated action can reflect attempts to either facilitate or preempt the growth of feminist demands. Facilitation implies that the State recognizes its responsibility to assure women equal opportunity and accepts this responsibility by creating mechanisms to address economic inequality.

An alternative, less benevolent, interpretation could counter that these events are attempts to preempt the rise of the Women's Liberation Movement. Labor force participation and political participation rates among women increased dramatically during the fifties. By initiating action at this stage, the State can shape and diffuse attempts to place women's issues on the political agenda. A closer investigation should illuminate which, if either, of these explanations is an adequate representaion of State intent.

In 1961 President Kennedy established a Presidential Commission on the Status of Women. In establishing the commission he publicly announced that the "full realization of women's basic rights [are] part of our Nation's commitment to human dignity, freedom, and democracy." This was the first presidential advisory body to review the status of women. Moreover, it was the first time since the Suffrage Amendment that the federal government addressed itself to the issue of women's rights.

Kennedy created the Commission in response to active lobbying by women in the Democratic Party and personal appeals by Eleanor Roosevelt and Esther Peterson (a member of his campaign staff, head of the Women's Bureau, and originator of the proposal). The evidence suggests that Kennedy acted on the recommendation as an expedient way of repaying the hundreds of women who worked in his campaign and as a means of postponing consideration of the ERA which faced major opposition from Labor Unions. The Commission was charged with documenting the extent of sex discrimination and determining if the ERA was the appropriate means of remedy.

At a minimum, the establishment of the Commission forestalls debate on the amendment. If the Commission found the ERA unwarrented (which it did) then further debate on the question would be quashed. It appears that what initially looked like an act of facilitation turns out to be

an attempt at repression.

That is not, however the full story. The establishment of the Commission did inadvertently facilitate the emergence of the Women's Liberation Movement. Following the lead of federal efforts, politically active women pressed for the establishment of state level organizations. Many governors acquiesced to these demands because they were a means of paying off political favors. Women were handed political appointments that were assumed powerless but symbolically important.

An unobtrusive but extensive women's network was building around these commissions. This network provided an organizational structure for politically active women engaged in documenting a pervasive pattern of sex discrimination. Eventually, some of these women tired of their advisory role. The National Organization for Women (NOW), formed in 1966, was an offspring of the state commissions. Ironically, an attempt to remove ERA from the political arena ultimately led to the formulation of an expanded set of demands which included the controversial amendment.

While the commissions are involved in documenting discrimination under Presidential initiative, Congress passed two laws whose stated purpose is to address issues of economic inequality. The Equal Pay Act (EPA) passed in 1963 is the first piece of legislation on women's rights since the 19th Amendment. The EPA focused on equal pay for equal work. Concern over economic equality was expanded under Title VII of the 1964 Civil Rights Act covering a wider range of labor market activity to insure equal opportunity. Why were these historic bills passed in the absence of mass-based demands?

Concern over equal pay has been with us since the late 1800's (escalating during WWI). However, equal pay for equal work does not emerge as a serious political demand until after WWII when service men feared that if women were paid at lower rates their jobs would not be automatically restored. Helen Gahagan Douglas introduced the first comprehensive federal equal pay bill in 1945. After 18 years of persistent lobbying the EPA is passed in 1963.

Union women and women's rights organizations mounted a long, hard, and ultimately effective campaign to have this policy placed on the political agenda. These efforts are not to be minimized or negated, but, in the end, the enactment of this legislation was due to the efforts of organized labor. As women's labor force participation rates increased and their average work-life expectancy climbed, labor unions become increasingly concerned that men will

loose out in favor of women's cheaper labor.1 The Equal Pay Act came about more out of a concern for men than for women.

Title VII of the Civil Rights Act of 1964 is a textbook case of symbolic legislation. Under strong pressure from Civil Rights groups, the Kennedy administration pressed for an enforceable, wide-ranging effort to insure equal employment opportunity. The agency established to implement the legislation, Equal Employment Opportunity Commission (EEOC), was designed to have "cease and desist" powers. This proposal was not concerned with sex discrimination.

The input from the Executive Branch asked for a strong attack on market characteristics that foster race discrimination. Congress passed a bill that tacked on "sex" and removed all enforcement power. The addition of sex to Title VII was motivated by an attempt to repress the advances for Civil Rights groups rather than an attempt to facilitate equal employment opportunity for women.

The inclusion of sex was treated as both a joke and a threat. Many liberal supporters of the original bill (including some long-time advocates of women's rights) vigorously opposed the amendment. A strong lobbying campaign by the Business and Professional Women's Clubs and Congresswomen saved tne amendment. What they saved was an anemic bill containing a clause making it legal to discriminate in cases where sex is a bona fide occupational qualification (bfoq). What they saved was a foot in the door.2

The absence of concern over women's rights is also evident in the actions taken by the enforcement agency. The first executive director of EEOC called the provision a "fluke." EEOC commissioners saw it as a distraction from their real work to combat race discrimination. Understaffed, underbudgeted, and enfeebled, EEOC assigned lower priority to cases involving sex discrimination. Feminist organizations would eventually wage a two-pronged attack to both increase the sanctioning and enforcement powers of the agency and to force it to be more attentive to cases involving sex discrimination.

The passage of the EPA and Title VII required that

1A comprehensive, cross-national survey of equal pay policy found this pattern to hold for most Western countries (Ratner, p.29).

2Sustained lobbying by feminist organizations has succeeded in forcing the EEOC to adopt a narrow interpretation of what constitutes a bfoq.

women's rights advocates form tenuous coalitions with former foes. The EPA involved a coalition with labor, a group opposed to women's expansion into the male labor market. The passage of Title VII saw the formation of a very strange coalition between feminists and Southern Democrats who hoped to use the sex provision to keep both groups in their place.

The Equal Pay Act is limited in scope. If fully implemented, many women would receive economic compensation in the short-run. By failing to address institutional arrangements that result in sex-segregated occupations, this legislation will have marginal effect on narrowing the wage gap between men and women in the long-run. Title VII is much broader in scope. If EEOC had the intended "cease and desist" powers, the likelihood of changing institutional sources of sex discrimination would increase. A comparison of the effectiveness of these two laws illustrates the extent of the State's commitment to attaining equal economic opportunity for women during the early sixties.

[redacted] EPA coverage is limited to occupations covering 61% of all wage and salary earners in situations where men and women perform the same work. The Department of Labor, charged with enforcing the EPA, has the power to police employers by initiating investigations in the absence of any formal complaints. Individuals bringing complaints are assured anonymity in order to mitigate against possible retaliation. If efforts to secure compliance are not successful, both the executive agency and the individual have the right to bring suit. Complaints are processed quickly. Almost 95% of cases involving violations are settled out of court.

In contrast, all EEOC can do to directly effect employment discrimination is to conciliate complaints, file amicus curiae briefs, and make recommendations to the attorney general. The agency was given no sanctioning mechanism to insure compliance. Between 1965 and 1972, EEOC found "reasonable cause" for pursuing conciliatory action in 15000 complaints charging sex discrimination. Approximately half of these cases were successfully conciliated. Title VII places the burden of fighting discrimination on the individual. A complainant's name is revealed to an employer when a charge is filed leaving the individual open to harassment and retaliation. The burden of bringing suit is also passed on to the individual if the attorney general chooses not to act on an EEOC recommendation.

An examination of other legislative and executive decisions at this time reveals several instances of failure to treat sex discrimination as a priority issue. In an Executive Order (E.O.)issued in 1961, Kennedy charged a committee with implementing equal employment opportunities in government employment and in the employment of

government contracts. The order required that contractors take affirmative action to ensure that applicants are employed and employees treated without regard to race, creed, color, or national origin. Note the absence of sex. The Commission on the Status of Women was established in 1961. Its report documenting pervasive sex discrimination came out in 1963. Executive Order 1114 issued later that year extended requirements to federally assisted contracts. In 1964, Executive Order 1141 broadened the nondiscrimination clause to forbid discrimination on the basis of age. Discrimination on the basis of sex is not illegal.

Title VII of the 1964 Civil Rights Act prohibits discrimination for nonprofessional and professional workers in the private sector. Title IV of the same Act allocates funds for operating general assistance centers and training institutes aimed at eliminating segregation based on race, color, religion, and national origin. Sex is omitted. Title VI of this Act administers antidiscrimination efforts in project grants. Title VI does not prohibit sex discrimination. Unlike the case in the Administration of Title VII, these two provisions have some enforcement and sanctioning mechanism.

In the year following the Civil Rights Act of 1964, Johnson issued an executive order (E.O. 11246) prohibiting federal contract funds from going to employees who discriminate in their employment policies or practices. This order mandates that contractors develop affirmative action plans in order to remain eligible for federal contracts. Discrimination on the basis of sex is not prohibited.

The National Commission on the Status of Women, the Equal Pay Act, and Title VII were not primarily initiated to ensure women equal economic opportunity. The intended impact of these actions is very limited due to either the scope of coverage or lack of enforcement/sanctioning power. The low priority of women's rights is further illustrated by the failure to include provisions against sex discrimination in other significant antidiscrimination efforts at the time. In sum, the State's interest in taking action on sex equality is minimal. However, the actions taken do provide weapons for attacking sex discrimination when a serious campaign is mounted in the future.

Legislative Action: The Early Seventies

Returning to the event data in Figure 1, the analysis reveals that further policy intervention in the area of women's rights follows an extended period of organized interest group lobbying and mass-based demonstrations. When the Women's Movement emerges in 1966 there was no real national policy on the status of women. In 1967 NOW waged

an all-out-war on sex discrimination. It organized a national day of picketing against EEOC in New York, San Francisco, Pittsburgh, Washington, D.C., and Chicago. This was one of the earliest national demonstrations of the Women's Liberation Movement. NOW members picketed the New York Times to protest its sex-segregated want ad policy and forced EEOC to hold hearings on establishing guidelines. By the time of its second national convention NOW had 14 chapters and 1200 members.

Amendment of E.O. 11246 to include sex was a top priority for feminists. Enlisting the help of the Women's Bureau, they mobilized a sophisticated and effective campaign on the Executive branch. In 1967, Johnson signed E.O. 1135 prohibiting sex discrimination by federal contractors.

The attack continued as NOW filed a formal complaint against the New York Times in 1968 and a mandamus suit against the EEOC to force compliance with Title VII. Under pressure from feminist groups, EEOC ruled that sex-segregated want ads were in violation of Title VII. One year later, it established that state protective labor legislation that applied only to women was in direct violation of Title VII.

Independent of these efforts, many radical women were also forming feminist groups in 1968. New York Radical Women, Seattle Radical Women, Chicago Cadre of Women, and WITCH were all founded around this same time. New York WITCH covens hexed the New York Stock Exchange and the market dropped five points.

Many people were introduced to the new feminist movement when radical women protested the 1968 Miss America Pageant. A "freedom trash can" to receive bras, girdles, false eye lashes, and other paraphernalia designed to objectify women was featured. This was the first feminist activity to receive front-page coverage across the land.

Feminist organizations continued to proliferate. The Women's Equity Action League (WEAL) was formed by former members of NOW and began to barrage the courts with formal charges of sex discrimination. Federally Employed Women (FEW) was formed to protect the interests of women employed by the Federal government and to monitor the actions of the Civil Service Commission.

In 1970, The Women's Liberation Movement expanded its arena of action. On the legal front, NOW filed blanket complaints of sex discrimination against 1300 companies receiving federal funds. WEAL filed a class action suit against all medical schools. By the end of the year, 300 other educational institutions were charged with sex

discrimination in violation of E.O. 11375. The Department of Justice filed its first sex discrimination suit under Title VII. Airline stewardesses sued TWA charging discriminatory pay scales and challenging company rules demanding immediate dismissal of married women and a mandatory retirement age of 35.

The question of sexism was raised in relation to most aspects of women's lives. Hawaii, Alaska, and New York passed extremely liberal abortion laws with the explicit statement that women have a right to control their bodies. The National Committee for Household Employment was formed to improve the wages and working conditions of domestic workers. Five separate bills authorizing funds for day care centers were introduced into Congress. Women artists picketed exhibits at the Whitney Museum, protesting their lack of equal representation. The women's professional tennis tour was planned as an act of protesting unequal prize allocations.

Feminist fever even converted some former foes. The UAW reversed its past opposition to the ERA and gave it a strong endorsement. In celebration of its 50th Anniversary the Women's Bureau retracted its past reservations and came out in strong support of the amendment. The YWCA, which never actively participated in a movement for social change since it was founded in 1867, changed its platform in 1970 and formed a National Women's Resource Center.

To celebrate the 50th anniversary of the Suffrage Amendment, NOW coordinated the efforts of many feminist groups to stage the Women's Strike for Equality. This was the largest demonstration ever held for Women's Rights. Thousands of women across the country, many of whom had not been active in the movement before, marched, picketed, attended rallies, and staged sit-ins in demand of social equality.

The plunging line after 1970 in Figure 1 should not mislead the reader to conclude that feminists' efforts slackened after the initial burst of activity. In 1971 the Professional Women's Caucus (PWC) instituted a class action suit against <u>every</u> law school receiving federal funds, charging discriminatory admissions policies. Texas WEAL presented leading Dallas banks with fully documented charges of discrimination. The National Women's Political Caucus (NWPC) was formed. When Congress convened in 1972 its agenda was full of items concerned with feminist goals.

Political activism on behalf of women's rights gains momentum in 1966 and continues to grow. Signs of sympathy for feminist goals (not necessarily the Women's Liberation Movement) become evident in the late sixties. Does this pressure force the State to conciliate or are women handed

symbolic embellishments like Title VII. An examination of the what happens to the EPA and Title VII during this period provides a vehicle for exploring whether women have gained power.

The Equal Pay Act Revisited

The EPA is the most effectively enforced but also the most limited federal statute used to counter sex discrimination. Under the most restrictive definition of what constitutes equal work, the Department of Labor awarded $18.7 million in back pay to 54,000 women for complaints filed between 1965 and 1970 (Kreps,p.92). The Act has been effective in gaining compensation even under a restrictive definition because sex discrimination in the labor market is blatant.

It was not until a federal court ruling redefined the meaning of "equal work" that the EPA really gained vitality. The Supreme Court held that the phrase "equal work" required that jobs be substantially equal not identical.3 In the next year the number of EPA complaints increases dramatically and the amount of back pay awarded doubles. A backlog also begins to develop (Table 4). The scope of the EPA is expanded by judicial interpretation. The staff and budget of the enforcement agency remains the same. As a consequence of increased workload, the EPA becomes less effective.

Further expansion of the scope of EPA came in 1972 and in 1974. Coverage was extended to previously exempted groups employees of state and local governments, executive administrative, academic, and professional employees. This increased scope has also hampered enforcement. The number of complaints filed between fiscal years 1973 to 1975 increased by 23%. The backlog increased by 55% (National Commission, 190).

The number of cases and amount of back pay awarded under EPA indicates that within its limited scope this statute does have significant impact in remedying wage rate discrimination. Unfortunately, enforcing restoration of back pay has not been as effective. Over $135 million in back pay was found due as of January 1977. Only $29.5 million had been recovered (Greenberg, 118).

The growing backlog and less impressive restoration record are administrative problems due, in part, to an expansion of scope without the prerequisite allocation of personnel. Even if this were remedied, the future

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3Schultz v. Wheaton Glass Co., 421 F2d 259 (3d Cir.,197), cert denied, 398 US 905 (1970).

Table 4: A Decade of Equal Pay Findings: 1965-1975

Fiscal Year	# of Underpaid Employees	Amount Found Due	Amount Restored	Complaint Backlog (# of Cases)
1965	960	$ 156,202		
1966	6,633	2,097,600		
1967	5,931	3,252,319		
1968	6,622	2,448,405		
1969	16,100	4,585,344		
→ 1970	17,719	6,119,265		
1971	29,993	14,842,994		456
1972	29,022	14,030,889		432
1973[a]	29,619	18,005,582	4,626,251	1,201
1974[b]	32,792	20,623,830	6,841,443	1,487
1975	31,843	26,484,860	7,474,163	1,798

[a]Figures for 1973 do not include $6,300,000 paid under the Equal Pay Act by American Telephone & Telegraph to 6,100 of its employees

[b]Figures do not include $7,000,000 AT&T agreed to restore to 7,000 employees

→ Supreme Court Decision redefining equal to mean substantial rather than identical

Source: Marcia Greenberger, "The Effectiveness of Federal Laws Prohibiting Sex Discrimination in Employment in the United States," in Ronnie Steinberg Ratner (ed.), Equal Employment Policy for Women (Philadelphia: Temple University Press, 1980), Tables 4.1-4.3.

effectiveness of EPA is limited. Recent court cases have allowed for differences in wage rates if they are based on factors other than sex (merit, seniority). Since jobs are sex segregated, full compliance with EPA would not dramatically alter wage patterns unless there is "equal work" gets interpreted to mean "work of equal value or worth." This is the next step needed to increase women's rights in the labor market.

When the EPA was passed women employed in full-time jobs earned 60% of the average male wage. In 1977, after twelve years of law suits and settlements, women earned 57% of the average male wage (Greenberg,p.112). The large monetary settlements granted under the EPA may be convincing employers of the seriousness of eliminating wage differentials for equal work but it still does little to address institutional sources of sex discrimination such as sex-specified job classifications, recruitment patterns, training programs, and promotional practices.

Title VII Revisited

Title VII was allocated the task to address these issues but not the power. Feminist organizations have concentrated a great deal of resources to secure increased enforcement and sanctioning power as a means of furthering their goals. They have succeeded in gaining minimal sanctioning power but have been much less successful in forcing effective enforcement.

Women's groups (particularly NOW) monitored EEOC activity closely. Noting the lack of commitment to enforcing the sex provision, the first step was to force EEOC to issue guidelines giving a narrow interpretation of what constitutes a "bona fide occupational qualification." When EEOC allowed sex-segregated want ads and state protective labor legislation to stand, NOW forced hearings on sex discrimination guidelines in 1967. A few months later it picketed EEOC offices across the country. In early 1968 it filed a suit against the Commission demanding that it comply with the law. Harassing EEOC was one strategy. Feminist organizations were also bringing suit under Title VII. Several suits specifically charged state protective labor legislation in violation of Title VII. The court decisions supported feminist claims and invalidated state laws. EEOC reversed its position on sex-segregated want ads in 1968. In 1969, EEOC brought its ruling in line with judicial interpretation.

Feminist activism and public opinion in support of women's rights provided the necessary "political climate" for pressuring elites. As the Women's Liberation Movement gained momentum, EEOC became more responsive and responsible in the area of sex discrimination. Enacted in 1964, the

Department of Justice filed its first Title VII sex discrimination case in 1970 (Libby Owens). The first Supreme Court case (Phillips v Martin Marietta Corp., 400 US 542) was heard in 1971. Unfortunately, the agency could actual do very little. Reasonable cause for charges of discrimination was found in 15,000 complaints filed between 1965 and 19724. Only half of these cases were successfully conciliated.

Women's groups joined other civil rights organizations in an effort to gain enforcement power for EEOC. Another compromise in the history of equal opportunity legislation was reached in 1972. The enactment of the Equal Employment Opportunity Act of 1972 gave EEOC the authority to initiate litigation against employers when conciliation attempts failed. Title VII coverage was extended to educational institutions, state and local governments, and businesses and unions with 15 or more members (25 was the previous limit). A provision permitting complaint charges on behalf of aggrieved individuals was also added. By the end of 1973, EEOC filed 152 discrimination suits (Freeman, p.184).

The extension of coverage and authority to sue increased the Commission's power but not it's enforcement capabilities. Discrimination complaints have been growing steadily since 1965, escalating after the 1972 amendment. The number of unresolved charges also grows rapidly. By 1975 the total backlog reached over 100,000 cases (Table 5).

Investigative procedures have also been found faulty. Most cases are deferred to state and local agencies that reject up to 90% as unsuitable. Investigations are sloppy and many case workers are not adequately trained to investigate discriminatory practices. A study of 77,402 EEOC records found that many cases were not properly investigated, documentation of charges was insufficient, and investigative records were inconsistent5 (IWY, pp.195-196). Once again, the State extends jurisdiction and sanctions but fails to allocate funds to assure enforcement.

Even if EEOC were not underbudgeted and understaffed, it's political potential is limited because the cost of

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4Twenty percent of these cases involved charges of sex discrimination.

5The Government Accounting office conducted this study and found: 1)11,433 of the charges deferred to state and local agencies were not returned to the Commission, 2) 5,186 charges reported as fully investigated did not show that they had been assigned an investigator, and 3) 8,422 charges reported to be fully investigated did not indicate that charges had been served.

Table 5: The Record of EEOC: 1966-1975

FY	Charges Received	Charges Resolved	Total Backlog
1966	8,854	6,347	2,507
1967	9,688	5,134	7,061
1968	6,720	5,002	10,436
1969	12,148	6,343	16,242
1970	14,234	5,967	24,569
1971	22,920	11,497	35,932
1972	32,840	7,576	57,970
1973	48,899	11,940	80,516
1974	56,953	37,726	97,761
1975	65,000	62,000	102,000

Source: National Commission on the Observance of International Women's Year, "To Form a More Perfect Union," U.S. Government Printing Office, 1976, p. 195.

enforcement is passed on to private individuals. Cumbersome filing procedures, delays due to an increasing backlog of unsettled claims, fear of reprisals, and a legacy of court decisions supporting blatant discriminatory practices discourage women from bringing charges and lawyers from taking cases. The provision of awarding attorney's fees to successful plaintiffs has slightly improved access to the courts. The cost of litigation remains prohibitive. The probability of deffering cost is not high. Between 1965 and mid-1975, courts ordered relief in only 13% of the sex discrimination cases filed6 (Greenberg,).

As it stands, Title VII provides no incentive for employers to eliminate discriminatory practices before they are sued. The EPA punishes violators by remanding back pay. Executive Order 1135 threatens the cancellation of contracts7. The virtual absence of sanctions for noncompliance coupled with the small number of successful court cases strongly limits the effectiveness of the most comprehensive prohibition on sex discrimination in employment. Whatever limited success Title VII has had, it has been due to the initiative of private individuals and feminist organizations rather than a governmental effort to spearhead enforcement.

CONCLUSION

Group mobilization models have argued that the success of political challengers is dependent on their capacity to expand the scope of political conflict. This socialization of conflict increases the resource base of challenging groups ad brings added pressure on the State to arbitrate in favor of the new interests. The degree of success, however, is dependent on whether authorities adopt a conciliatory response or formulate legislation aimed at averting further conflict while making minimal changes in patterns of resource distribution. It is often assumed that the State welcomes conflict because it allows for legitimation of outside interference in private concerns thus facilitating the increase of State power. While this may be true in the long run, the arbitration among contending interests in the United States is likely to be (initially) heavily weighted in favor of established members of government coalitions.

When legislating on highly controversial issues where the cost of coalition formation is high, authorities adopt

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6Relief was granted in 24% of the race discrimination cases.

7Only 13 contracts had actually been canceled by 1977 but investigative threats have resulted in higher compliance levels than Title VII cases.

broad structural policies that establish procedures rather than allocate resources (Salisbury and Heinz). Broad mandates with vague delegations of power absolve legislators from the consequences of implementation. Passed in emotionally laden situations, regulatory statues satisfy the rhetorical demands of a protest movement and its sympathizers without necessarily providing tangible rewards. (Edelman)

The Feminist Movement has placed women's issues on the agenda but that does not mean that they have been successful. The EPA, Title VII, and E.O. 1135 serve as examples of the kinds of efforts the State is currently willing to extend8. The divergence between the political promises outlined in the flowery goals and the allocation of resources and ability to enforce sanctions points to the symbolic nature of these equal opportunity policies (Edelman, Lowi).

Success needs to be discussed in terms of outcomes and their costs. This review of 15 years of legislative effort documents procedural alterations but little substantive change. Women rather than the State have paid the price for these changes. It is a very costly proposition. In the short-term an analysis of current gains suggests that legislative efforts have been marginal in addressing women's labor-market problems. Regulatory policies are passed in an attempt to diffuse pressure. ¶ The long term implications of the legislative procedures are harder to evaluate. By establishing guidelines for future allocation of resources the State is able to buffer against short-lived demands. The vagueness and symbolic nature of regulatory policies do not necessarily mean that they can never be converted into means of generating tangible resources. If this process can come about, it requires long-term, sustained effort on the part of the challenging group. The Women's Movement had and has at its disposal many resources crucial to this conversion process: organization, money, numbers, public support, expertise, and sympathizers in the bureaucracy. If regulatory policies can become redistributive then the Feminist Movement will demonstrate that potential.

The success of the Feminist Movement is harder to evaluate if one analyzes the pattern as well as the substance of response since the early sixties. Emphasis on relative rather than actual gains suggests progress. The scope, enforcement, and sanctioning powers of these bills have been increased, even if only at the margins. If this pattern is projected into the future, there may be a point

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8The history of other feminist legislative efforts (Title IX, Equal Credit Opportunity Act) also document symbolic laws coupled with a lack of sanctions, enforcement power, and funding.

when the challenging group has to expend less effort to gain a greater share of existing resources.

The procedural changes passed in the early seventies are also updated at the end of the decade. The EEOC backlog reached 130,000 complaints by 1977 bringing increased lobbying efforts from feminist and civil rights organizations. In 1978 Carter sent a sweeping plan to reorganize federal enforcement of equal opportunity laws. Oversight of civil rights legislation has been consolidated under EEOC, its staff is being enlarged, and new emphasis has been placed on establishing pattern and practice cases cover a larger number of women.

While this reorganization effort and increased budget allotment may improve efficiency, these procedural efforts do not address such issues as work of equal worth, EEOC is not given effective sanction power, and women continue to bear the burden of using these procedures to change distribution patterns.What is not known is whether these changes will reduce the cost that women have to pay. If so this could indicate some increase in power.

The evaluation of legislation in the area of civil rights is very difficult. Some people use the input dimension (motivation, budget, program size and scope) to evaluate effectiveness of social programs. Others emphasize outputs (Evans). Both of these are static evaluation procedures. What is needed is a way to analyze the process between these endpoints. Power can be conceptualized as a ration:

BENEFIT/COST * SCOPE

Symbolic legislation is characterized by high costs and few benefits. Over-time, this ratio may shift as organized groups continue to exert pressure on the State. Imagine and S-shaped curve where feminist organizations have to exert a great deal of effort before they cross the threshold passing from procedural to substantive change. These procedural responses may or may not be prerequisites to gaining benefits. If they are, then the Women's Liberation Movement may be more successful than one would conclude based on an analysis of absolute gains.

Appendix A

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